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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT TORRANCE MIXON,

Defendant and Appellant.

C037980

(Super. Ct. No. SF080549A)

A jury convicted defendant Robert Torrance Mixon of attempted residential burglary.<sup>1</sup> After defendant waived a jury trial on the question of the truth of the prior conviction allegations contained in the information, the trial court found all six separate allegations of prior serious felony convictions true.<sup>2</sup> The trial court sentenced defendant to 25 years to life in state prison on the burglary conviction and plus six consecutive five-year enhancements for the prior

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<sup>1</sup> Penal Code sections 664, 459. Undesignated section references are to the Penal Code.

<sup>2</sup> Section 667, subdivision (a).

convictions.<sup>3</sup> Defendant contends three of the prior conviction enhancements must be reversed because those convictions were not "brought and tried separately." The People concede this point. We shall modify the judgment to strike three of the five-year enhancements, and affirm the judgment in all other respects.

#### **FACTS AND PROCEDURAL HISTORY**

The underlying facts of defendant's current attempted burglary conviction are not germane to the resolution of this appeal.

Turning to the relevant prior convictions, in July 1989, the People filed a second amended complaint charging defendant with six counts of first degree burglary.<sup>4</sup> The People subsequently filed an information charging five of these counts. Defendant pleaded guilty to the five counts of first degree burglary charged. On November 13, 1989, the trial court sentenced defendant to state prison for five concurrent four-year terms, plus additional time for two enhancements that are not relevant for purposes of this appeal.

In the instant case, the court used four of these convictions to add four consecutive five-year state prison terms to defendant's sentence of 25 years to life in state prison.

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<sup>3</sup> Section 667, subdivision (a).

<sup>4</sup> Section 459.

## DISCUSSION

Section 667, subdivision (a)(1) provides that the court shall impose a consecutive "five-year enhancement for each [qualifying] prior conviction on charges brought and tried separately." The Supreme Court examined this statutory language in the case of *In re Harris*.<sup>5</sup> There, the court stated: "[T]he requirement in section 667 that the predicate charges must have been 'brought and tried separately' demands that the underlying proceedings must have been formally distinct, from filing to adjudication of guilt."<sup>6</sup> Because the two underlying convictions in *Harris* were alleged in a single complaint, the Supreme Court concluded they were not brought separately.<sup>7</sup> The court reversed and remanded the case because only one of the two 5-year enhancements under section 667, subdivision (a) should have been imposed.<sup>8</sup>

Here, the underlying predicate convictions were charged in a single complaint and information. The defendant pleaded guilty to the charges and received a single sentence at a single sentencing hearing. Thus, these four convictions were not brought and tried separately and may not be used to impose four separate five-year enhancements to defendant's sentence under section 667, subdivision (a).

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<sup>5</sup> *In re Harris* (1989) 49 Cal.3d 131, 136.

<sup>6</sup> *In re Harris, supra*, 49 Cal.3d at page 136.

<sup>7</sup> *In re Harris, supra*, 49 Cal.3d at pages 136-137.

<sup>8</sup> *In re Harris, supra*, 49 Cal.3d at pages 136-137.

**DISPOSITION**

The judgment is modified to strike three of the five-year state prison enhancements under section 667, subdivision (a). In all other respects, the judgment is affirmed. The trial court is directed to prepare an amended abstract in accordance with this opinion and to send a certified copy of the amended abstract to the Department of Corrections.

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DAVIS, J.

We concur:

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SIMS, Acting P.J.

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MORRISON, J.